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Claimant SAMYANG FOODS CO., LTD.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SAM YANG (U.S.A.), INC.;
ROY PAC, INC. dba S.C. CONTINENT
CORPORATION;

Plaintiffs,

vs.

SAMYANG FOODS CO., LTD.; and
Does 1 through 20, inclusive,

Defendants.

SAMYANG FOODS CO., LTD.,

Counter-claimant,

vs.

SAM YANG (U.S.A.), INC.;
ROY PAC, INC. dba S.C. CONTINENT
CORPORATION; MUN-KYUNG
CHUN, and Does 1 through 20,
inclusive,

Counter-Defendants.

CASE NO. 2:15-cv-07697 AB (KS)

**DECLARATION OF KATE S. SHIN
IN SUPPORT OF DEFENDANT
SAMYANG FOODS CO., LTD.'S
MOTION FOR SUMMARY
JUDGMENT**

Date: December 22, 2017

Time: 10:00 a.m.

Ctrm: 4

Assigned to Hon. Andre Birotte, Jr.

DECLARATION OF KATE S. SHIN

I, Kate S. Shin, declare as follows:

1. I am an active member of the Bar of the State of California and an associate with Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, a Professional Corporation, attorneys of record for Defendant Samyang Foods Co., Ltd. (“SAMYANG Korea”) in this action. I make this declaration in connection with Samyang Korea’s Motion for Summary Judgment. Except for those matters stated on information and belief, I could and would so testify.

2. A true and correct copy of materials I downloaded and printed from Samyang Korea’s company website *www.samyangfoods.co.kr/eng/information/company/index.do* is attached hereto as **Exhibit 1**.

3. A true and correct copy of the articles of incorporation of Sam Yang (U.S.A.), Inc. (“SYUSA”), produced by Samyang Korea as SAMYANG0003303, is attached hereto as **Exhibit 2**.

4. A true and correct copy of SYUSA’s Objections to Notice of Deposition Under Fed. R. Civ. P. 30(b)(6) is attached hereto as **Exhibit 3**.

5. A true and correct copy of relevant excerpts from Mun-kyung Chun’s May 10, 2017 deposition transcript is attached hereto as **Exhibit 4**.

6. A true and correct copy of the deposition exhibit 1009 (bates-numbered as SY001398-1401) to Mun-kyung Chun’s May 10, 2017 deposition transcript is attached hereto as **Exhibit 5**.

7. A true and correct copy of the deposition exhibit 1016 (bates-numbered as SAMYANG0003316-3319) to Mun-kyung Chun’s May 10, 2017 deposition transcript is attached hereto as **Exhibit 6**.

8. A true and correct copy of the deposition exhibit 1032 (bates-numbered as SAMYANG0003304-3306) to Mun-kyung Chun’s May 10, 2017 deposition transcript is attached hereto as **Exhibit 7**.

9. A true and correct copy of the deposition exhibit 1112 (bates-numbered

1 as SAMYANG0001065) to Mun-kyung Chun's May 10, 2017 deposition transcript
2 is attached hereto as **Exhibit 8**, along with a certified English translation thereof.

3 10. A true and correct copy of relevant excerpts from Mun-kyung Chun's
4 October 20, 2017 deposition transcript is attached hereto as **Exhibit 9**.

5 11. A true and correct copy of the deposition exhibit 1069-c (bates-
6 numbered as SAMYANG0025381-5391) to Mun-kyung Chun's October 20, 2017
7 deposition transcript is attached hereto as **Exhibit 10**, along with a certified English
8 translation thereof.

9 12. A true and correct copy of the deposition exhibit 1119 (bates-numbered
10 as SAMYANG0003490) to Mun-kyung Chun's October 20, 2017 deposition
11 transcript is attached hereto as **Exhibit 11**, along with a certified English translation
12 thereof.

13 13. A true and correct copy of relevant excerpts from See-young Lee's
14 December 21, 2016 deposition transcript is attached hereto as **Exhibit 12**.

15 14. A true and correct copy of relevant excerpts from See-young Lee's
16 June 12, 2017 deposition transcript is attached hereto as **Exhibit 13**.

17 15. A true and correct copy of the deposition exhibit 1156 to See-young
18 Lee's June 12, 2017 deposition transcript is attached hereto as **Exhibit 14**.

19 16. A true and correct copy of relevant excerpts from See-young Lee's
20 September 13, 2017 deposition transcript is attached hereto as **Exhibit 15**.

21 17. A true and correct copy of the deposition exhibit 1051-c (bates-
22 numbered as SAMYANG0022586) to See-young Lee's September 13, 2017
23 deposition transcript is attached hereto as **Exhibit 16**.

24 18. A true and correct copy of the deposition exhibit 1051-d (bates-
25 numbered as SAMYANG0022607-2608) to See-young Lee's September 13, 2017
26 deposition transcript is attached hereto as **Exhibit 17**.

27 19. A true and correct copy of the deposition exhibit 1136 (bates-numbered
28 as SY000052-0065) to See-young Lee's September 13, 2017 deposition transcript is

1 attached hereto as **Exhibit 18**.

2 20. A true and correct copy of relevant excerpts from Woon-bae Yeo's
3 September 8, 2017 deposition transcript is attached hereto as **Exhibit 19**.

4 21. A true and correct copy of relevant excerpts from Woon-bae Yeo's
5 October 25, 2017 deposition transcript is attached hereto as **Exhibit 20**.

6 22. A true and correct copy of relevant excerpts from Michael Jin's June 8,
7 2017 deposition transcript is attached hereto as **Exhibit 21**.

8 23. A true and correct copy of relevant excerpts from Heejoo Claire Hong's
9 August 25, 2017 deposition transcript is attached hereto as **Exhibit 22**.

10 24. A true and correct copy of relevant excerpts from Seung Hoon Lee's
11 September 28, 2017 deposition transcript is attached hereto as **Exhibit 23**.

12 25. A true and correct copy of relevant excerpts from Saehyuk "Coby"
13 Han's January 24, 2017 deposition transcript is attached hereto as **Exhibit 24**.

14 26. A true and correct copy of relevant excerpts from Bonghoon Kim's
15 January 26, 2017 deposition transcript is attached hereto as **Exhibit 25**.

16 27. A true and correct copy of the deposition exhibit 106 (bates-numbered
17 as SY001315-1316) to Bonghoon Kim's January 26, 2017 deposition transcript is
18 attached hereto as **Exhibit 26**, along with a certified English translation thereof.

19 28. A true and correct copy of relevant excerpts from Bonghoon Kim's
20 July 6, 2017 deposition transcript is attached hereto as **Exhibit 27**.

21 29. A true and correct copy of relevant excerpts from Seunghyun Kim's
22 July 6, 2017 deposition transcript is attached hereto as **Exhibit 28**.

23 30. A true and correct copy of SYUSA's responses to Samyang Korea's
24 First Set of Interrogatories is attached hereto as **Exhibit 29**.

25 31. A true and correct copy of a correspondence produced by Samyang
26 Korea as SAMYANG0003340 is attached hereto as **Exhibit 30**, along with a
27 certified English translation thereof.

28 32. A true and correct copy of a correspondence produced by Samyang

1 Korea as SAMYANG0003344-45 is attached hereto as **Exhibit 31**, along with a
2 certified English translation thereof.

3 33. A true and correct copy of a document produced by Plaintiffs as
4 SY000185-212 is attached hereto as **Exhibit 32**.

5 34. Attached hereto as **Exhibit 33** is true and correct copy of a
6 correspondence dated November 29, 2011, produced by Samyang Korea as
7 SAMYANG0002848-2851, along with a certified English translation thereof.

8 35. Attached hereto as **Exhibit 34** is a true and correct copy of a
9 correspondence dated May 4, 2012, produced by Samyang Korea as
10 SAMYANG0002986-87, along with a certified English translation thereof.

11 36. A true and correct copy of a correspondence dated May 8, 2012,
12 produced by Samyang Korea as SAMYANG0002776, along with a certified
13 English translation thereof, is attached hereto as **Exhibit 35**.

14 37. Attached hereto as **Exhibit 36** is true and correct copy of an email with
15 enclosures dated October 16, 2012, produced by Samyang Korea as
16 SAMYANG0002717-3249, along with a certified English translation thereof.

17 38. Attached hereto as **Exhibit 37** is true and correct copy of an email with
18 an enclosure dated March 19, 2013, produced by Samyang Korea as
19 SAMYANG0001066-68, along with a certified English translation thereof.

20 39. Attached hereto as **Exhibit 38** is true and correct copy of a
21 correspondence dated April 18, 2013, produced by Samyang Korea as
22 SAMYANG0019241-51, along with a certified English translation thereof.

23 40. Attached hereto as **Exhibit 39** is true and correct copy of an email
24 dated April 21, 2016, produced by Samyang Korea as SAMYANG003308 and
25 SAMYANG0000931, along with a certified English translation thereof.

26 41. Attached hereto as **Exhibit 40** is a true and correct copy of material
27 relating to Samyang's trademark registration in 2005, which I printed from United
28 States Patent and Trademark Office's ("USPTO") web search engine, Trademark

1 Electronic Search System (“TESS”), <http://tmsearch.uspto.gov>.

2 42. Attached hereto as **Exhibit 41** is a true and correct copy of SYUSA’s
3 application to register the trademark “Samyang Ramen” dated November 11, 2015,
4 which I downloaded and printed from the USPTO’s Trademark Status & Document
5 Retrieval (“TSDR”) search engine, <http://tsdr.uspto.gov/#caseNumber=86817217>
6 &caseType=SERIAL_NO&searchType=statusSearch.

7 43. Attached hereto as **Exhibit 42** is a true and correct copy of the
8 USPTO’s Official Action entered on March 4, 2016, which I downloaded and
9 printed from TSDR.

10 44. Attached hereto as **Exhibit 43** is a true and correct copy of the
11 USPTO’s Final Official Action entered on April 13, 2017, which I downloaded and
12 printed from TSDR.

13 45. Attached hereto as **Exhibit 44** along with a certified English translation
14 thereof is Samyang Korea’s December 30, 2011 letter addressed to S.C. Continent
15 and MK Chun, produced as SAMYANG0002842-2844.

16 46. Attached hereto as **Exhibit 45** is a true and correct copy of the Buy-Sell
17 Agreement that SYUSA filed in another federal case, Central District of California
18 Case No. 2:13-CV-05274-PA-RZ. This is a copy of the same document that was
19 produced by SYUSA as SY001850, which was used as deposition exhibit 1021 to
20 Ms. Mun-kyung Chun’s May 10, 2017 deposition. I requested that counsel for
21 SYUSA withdraw the confidentiality designation for deposition exhibit 1021, but
22 was refused. As a result, Samyang Korea is hereby submitting an identical copy
23 downloaded from the court’s electronic filing system, PACER.

24 47. Attached hereto as **Exhibit 46** is a true and correct copy of the
25 Certificate of Dissolution of Calypco, Inc. that SYUSA filed in another federal case,
26 Northern District of California Case No. 2:13-CV-05274-PA-RZ. This is a copy of
27 the same document that was produced by SYUSA as SY001851, which was used as
28 deposition exhibit 1022 to Ms. Mun-kyung Chun’s May 10, 2017 deposition. I

1 requested that counsel for SYUSA withdraw the confidentiality designation for
2 deposition exhibit 1022, but was refused. Therefore, Samyang Korea is hereby
3 submitting an identical copy downloaded from the court's electronic filing system,
4 PACER.

5 48. I performed various searches on the TESS system to search for
6 applications for trademark registration submitted by SYUSA for any Samyang-
7 related trademarks. My search on TESS did not result in any trademark registration
8 application submitted by SYUSA between November 19, 1997 (the stated date of
9 the Distribution Agreement) and November 11, 2015 (the date SYUSA submitted its
10 application to register the "SAMYANG Ramen" trademark). The TESS system, on the
11 other hand, shows records of trademark applications submitted as early as February
12 7, 1977 for the "SAMYANG" mark by a third party entity called Kumho U.S.A. Inc.

13 49. I performed various searches on the TESS system and TSDR to look
14 for any sign of an opposition filed against Samyang Korea's 2005 trademark
15 registration when it was published for opposition in May 2005 or at any point
16 thereafter but I found none.

17 I declare under penalty of perjury under the laws of the United States of
18 America that the foregoing is true and correct and that I executed this declaration on
19 November 1, 2017 at Los Angeles, California.

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Kate S. Shin